

43

Central Administrative Tribunal, Principal Bench

O.A. No. 1391/2002

New Delhi this the 25th day of August, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.A. Singh, Member (A)

Bhanwar Singh Gujjar
S/o Shri Ram Rikh
Aged about 48 years
157, Aligang Kotla Mubarakpur,
New Delhi-110 003.

....Applicant

By Advocate: Shri Yogesh Sharma

Versus

1. U.O.I. through the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Chief Personnel Officer
Northern Railway,
Baroda House,
New Delhi-110 001.
3. Parmesh Kumar
S/o Late Mehar Chand
Working as Head Typist
Baroda House,
New Delhi.Respondents

By Advocate: Shri R.L. Dhawan, Counsel for official respondents.

Shri B.S. Mainee, Counsel for private respondent.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicant has filed this OA for a declaration that the surplus Typists (those who were absorbed in the Headquarters from the Delhi Division) and Headquarter Typists like the applicant who was borne in the cadre of Typists in the Headquarters constitute distinct and separate class, in accordance with the directive dated 21.4.1989 and their constitution of separate cadre is legal and valid. They further seek a direction for quashing the decision dated 22.2.2002 whereby the decision for bifurcating the cadre of Typists in the Headquarter was not implemented. Lastly, he prays for further direction

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that the applicant is entitled to seniority on the basis of directive dated 21.4.1989 in a separate cadre of Typists who were borne on the cadre of Typists in the Headquarters.

2. Briefly, the facts of the case are that due to computerization of reservation organisation the administrative and functioning control of Reservation Office at IRCA Building New Delhi and Delhi Main Railway Station, 94 posts (67 working and 27 vacancies) of Typists previously controlled by Delhi Division were transferred to Northern Railway Headquarters Office, New Delhi in November, 1988. As per the Railway Board Master Circular No.22/90 on the subject of 'Absorption and Utilisation of Surplus Staff', whenever a large number of staff has to be transferred to existing Units against vacancies or additional sanctioned posts, the views of the employees Unions may be taken as to whether seniority of the staff being shifted should be kept separate against the supernumerary post so that their promotional prospects were kept separate and identical to what they would achieve in the old Unit and it did not jeopardize the promotional prospects of the staff in that unit in which they were inducted. When the Typists working in Reservation Office and Delhi Main Railway Station were rendered surplus, the views of both the recognised Unions of the Railway employees were sought and in consultation with them, the surplus staff was assigned seniority in the category of Typists in the Northern Railway Headquarters Office on the basis of the length of service in the relevant grade/post. Thereafter, All India Typists Association and Others filed an OA 1203/1989 before this Tribunal challenging the transfer and absorption of Delhi Division Typists in the Northern Railway Headquarters Office, New Delhi which the Tribunal dismissed but allowed the applicant Typists liberty to approach the appropriate administrative and legal forum to seek redress in accordance with law about their seniority in case they felt aggrieved at any stage. The Employees Union 12 years after the merger of the cadre of surplus Typists with the cadre of the Headquarters Office Typists again approached the Railway Administration that they had no objection if the seniority of the surplus Typists was reviewed to be kept separately. The administration considered it and decided to issue a show cause notice of proposed bifurcation of seniority list into two separate seniority groups vide letter dated 12.4.2001 (Annexure R-2). Thereafter Shri Parkesh Kumar and Others, who were Typists of Delhi Division, filed OA No. 1164/2001 before the Tribunal against the proposed bifurcation of the seniority

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list. The Tribunal disposed off the OA by order dated 3.10.2001 and directed the respondent administration to consider the reply of the applicant filed to the show cause notice and dispose it off by a speaking order in accordance with the rules and instructions. The administration then re-examined the proposal of bifurcation of the Typists cadre and decided not to proceed further and the entire Typists cadre was allowed to remain as one group as has been the case for the last 12 years by issuing order dated 13.2.2002. But the applicant is aggrieved by this going back on the proposal to separate their cadre from the cadre of Typists of Delhi Division.

3. The contention of the applicant in the OA is that the Railway Board has laid down detailed guidelines for fixing the seniority of absorbed/surplus staff in its letter dated 21.4.1989, which is Annexure A-1, the salient features of which were that the views of the Union must be ascertained; absortees would constitute a separate class for promotion; separate seniority list would be maintained and; number of promotional posts of such absortees would be in proportion to the percentage applicable in their erstwhile unit. Delhi Division Typists comprised of relatively smaller cadre and they enjoyed benefit of accelerated promotions and in terms of the length of service most of them were junior to the applicant and other Headquarter Typists although they were working in the higher post. According to the applicant Uttariya Railway Mazdoor Unions by letters dated 19.10.1990, 30.5.1990 on the basis of the representation made by the applicant and others requested the respondent to maintain separate list of surplus Typists in view of their apprehension that their absorption would effect promotion chances of the existing Typists in the Headquarters (Annexure A-2). The Headquarter Typists filed OA 1230/1989 apprehending that the transfer of the surplus staff would affect their service conditions which was rejected by the Tribunal on the ground that they could, if they were aggrieved as to the seniority, would be entitled to approach the Tribunal and since there was no dispute as to inter-se seniority, no interference was called for (Annexure A-3). The respondent administration by order dated 4.2.1997, circulated a joint seniority list of Typists in the Headquarter and representation was invited from the employees against the draft seniority list. The seniority was not fixed in accordance with the 1989 guidelines. As a result, surplus Typists were interspersed and assigned seniority on the basis of the seniority in the erstwhile seniority unit without following the principles of length of

46

service. The applicant and the Unions at the behest of similarly placed employees continued to request for separate seniority for surplus Typists and Headquarter Typists (Annexure A-4). Acting on these representations and on the basis of 1989 directive of Railway Administration decided to bifurcate the cadre of Typist on the basis of the 1989 guide lines. Opinion of the Unions were sought (Annexure A-5). The Surplus Typists then filed OA 1164/2001 which was disposed off directing the respondents to consider their reply to the show cause notice and take a decision in the matter (Annexure A-6). The respondents by their order dated 22.2.2002 had informed the Unions that it had been decided not to bifurcate the Typists and continue as it existed for the last 12 years (Annexure A-7).

4. We have heard the learned counsel for the parties and gone through the records of the case.

5. Admittedly, the Typists in Delhi Division were declared surplus and were transferred to the Headquarters Office in 1988. Their seniority was merged with the seniority of the Typists cadre in the Railway Headquarters after due consultation with the two Railway Employees Unions which was the requirement of the Railway Boards guidelines. The applicant did not challenge this order of merger of the seniority of the Divisional Office Typists with the Headquarter Office Typists. He filed the present OA only in 2002. The OA suffered from delay and laches. But we do not propose to dismiss the OA on this ground alone since it cannot be sustained on merit also.

6. The case of the applicant is that pursuant to a suggestion made by the Employees Union, Railway Administration considered a proposal for bifurcating the cadres of Typists into two separate cadres one consisting of the Divisional Office Surplus Typists and other of the Headquarter Typists vide their letter dated 12.4.2001 (Annexure A-5) which is a show cause notice and the Typists were allowed to submit their objection/representation against this bifurcation as proposed in the letter. In OA 1164/2001 which was filed by the some Typists of Divisional Office, the Tribunal on 3.10.2001 (Annexure A-6) directed the respondent to dispose of the applicant's reply to the aforesaid show cause notice by reasoned order. Accordingly, the Railway Administration reexamined the entire matter and decided upon against proposed bifurcation of Typists cadre. Accordingly, circular dated 22.2.2002 (Annexure A-7) was

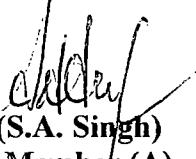


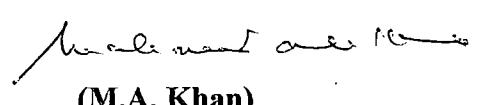
47

ssued conveying this decision to the Union of the employees that the authorities proposal for bifurcation of the Typists cadre for which show cause notice was issued by letter dated 12.4.2001 would not be pursued further and entire Typists cadre would be allowed to remain as one group as was the case for the last 12 years.

7. The contention of the applicant that this decision is not in accordance with the guide-lines of the Railway Board dated 24.4.1989 (Annexure A-1), to our view, does not cut much ice. The Railway Board has taken a policy decision at the time of the transfer of surplus Typists of Delhi Division to the Railway Headquarter way back in 1988 and had also merged their seniority with the Typists cadre of the Railway Headquarter. The guide-lines, Annexure A-I, is also a policy decision. The proposal for segregating the cadre of Delhi Division Typists from that of Railway Headquarters Typists was also a policy decision. No final decision was taken in the matter. In fact, the show cause notice was issued to the affected Typists for filing their objection/representation against the separation of the cadre by bifurcation ^{or merging} _{of} the merged cadres of Typists. This representation was considered by the Railway Administration and the final decision was against bifurcation of the cadre. This is a policy decision, which is a State prerogative. Under the power of judicial review this Tribunal cannot interfere with it unless the decision is contrary to any statutory provision or rules ^{or} _{or} the provisions in the Constitution of India. We do not find in this case that the decision taken by Railway Administration shelving the proposal for separating the cadre of the Delhi Division Surplus Staff and Headquarter Staff Typist, as conveyed by letter dated 22.2.2002, has contravened any of the statutory provisions or the rules ^{or} _{or} is violative of the Constitution of India warranting interference by this Tribunal.

8. The result of the above discussion is that the OA fails and is dismissed but parties are left to bear their own costs.


(S.A. Singh)
Member (A)


(M.A. Khan)
Vice Chairman (J)

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